

DATE: May 21, 2003

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-17998

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Marc Curry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was convicted of a single state felony drug trafficking charge in 1989 and later sentenced to 3 to 15 years in a state penal facility. Applicant's conduct is perforce covered by the Smith Amendment (10 U.S.C. Sec. 986), which bars persons sentenced to more than one year of incarceration, regardless of time actually served, from ever holding a security clearance, absent a meritorious basis for an exception (not recommended here). While Applicant has successfully completed his probation and mitigated his drug use, he has not mitigated the trust concerns raised by his admitted criminal conduct, or his still undischarged delinquent debts and multiple falsifications of his security clearance application (SF-86). Clearance is denied.

STATEMENT OF THE CASE

On October 8, 2002, the Defense Office of Hearings and Appeals, pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on October 31, 2002 and requested a hearing. The case was assigned to this Administrative Judge on December 17, 2002, and was scheduled for hearing. A hearing was convened on March 17, 2003, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny or revoke Applicant's security clearance. At hearing, the Government's case consisted of five exhibits; Applicant relied on one witness (himself) and three exhibits. The transcript (R.T.) of the proceedings was received on March 25, 2003.

PROCEDURAL ISSUES

Prior to the close of the hearing, Applicant asked for leave to keep the record open to afford him the opportunity to

supplement the record with documented payment arrangements with several of his creditors. There being no objection from Department Counsel, and good cause being shown, Applicant was granted an additional seven (7) days in which to supplement the record. Government, in turn, was given five (5) days to respond to any Applicant submission. Within the time permitted, Applicant did not provide any supplemental documentation.

STATEMENT OF FACTS

Applicant is a 32-year old assembler employed by a defense contractor since October 2000 who seeks a security clearance.

Summary of Allegations and Responses

Applicant is alleged to have been arrested in September 1989 in State A for aggravated drug trafficking, to which he pleaded guilty to the lesser offense of trafficking and was sentenced to serve 3 to 15 years in prison, served a little over two years, and was paroled in April 2002. Because Applicant was convicted and sentenced to more than 365 days in prison, the facts alleged are covered by the Smith Amendment (10 U.S.C. Sec. 986), which disqualifies him from holding a security clearance, excepted by a granted waiver in a meritorious case.

Additionally, Applicant is alleged to have been arrested in June 2000 in State B for simple possession of marijuana, to which he was found not guilty.

Applicant is alleged to have used marijuana, with varying frequency, to include a couple of times weekly, from about November 1999 to at least June 2000.

So, too, Applicant is alleged to have experienced financial problems: specifically, initiated Chapter 13 bankruptcy relief in April 1998 on debts totaling about \$32,000.00, which was dismissed in May 1999 following Applicant's failure to make timely payments to the bankruptcy trustee, and Applicant intention not to pay any of his delinquent debts and wait instead until they are removed from his credit report by the passage of time.

Also, Applicant is alleged to have falsified his security clearance application (SF-86) of November 2000 by omitting (a) his felony conviction and drug-related arrest, (b) his prior illegal use of drugs, and (c) his accrued delinquent debts in excess of 180 and 90 days, respectively.

For his answer to the SOR, Applicant admitted each of the allegations, subject to explanations: His admitted marijuana use was minimal; his Chapter 13 dismissal and declared avoidance of his debts was due to bad legal representation and advice; he misinterpreted question 21 of his SF-86, which called for the listing of felony offenses only; and he lacked the necessary documentation to properly answer questions 38 and 39 relative to his debt delinquencies.

Relevant and Material Factual Findings

The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference adopted as relevant and material findings. Additional findings follow.

Applicant's first arrest occurred in 1989 at the age of 19. He and a friend were taped by an undercover police officer arranging a sale of marijuana. Applicant had agreed to help a friend (reportedly already in trouble with law enforcement) who, in turn, set him up with an undercover officer (*see R.T.*, at 39). When approached by the undercover officer, Applicant sold him a half sheet of acid, worth about \$50.00 (*see R.T.*, at 45-46). Applicant was then arrested on aggravated drug trafficking charges and later pleaded to a reduced charge of trafficking, for which he was sentenced to 3 to 15 years in a state correctional facility (*see ex. 2*). Applicant served 2 years in a state correctional facility before being paroled (*see R.T.*, at 46). He completed a substance abuse program as a condition of his parole in 1992 (*see R.T.*, at 46-47). Applicant's 1989 arrest, conviction and sentencing for drug trafficking in State A is admitted and documented in the evidence and is fully covered by the Smith Amendment (10 U.S.C. Sec. 986). By order of the sentencing court in State A, Applicant's arrest and ensuing judicial proceedings was expunged and erased on Applicant's motion in October 1996 (*see ex. A*). With this expungement order, Applicant's parole requirements expired.

Besides his 1989 arrest and conviction, Applicant was arrested in State B in June 2000, this time for simple possession of marijuana, but was later exonerated. Applicant had been stopped for suspected speeding while carrying fellow workers from a construction site. The arresting officer found marijuana in his vehicle when he searched it and arrested him on marijuana possession charges. When one of his passengers later admitted to owning the marijuana, charges against Applicant were dropped. Still, Applicant admits to smoking marijuana in the car with his fellow passengers before he was stopped by police (*see R.T.*, at 52-53).

Introduced to marijuana in high school, Applicant used the substance sporadically between 1986 and 1988 (*see R.T.*, at 47-48). He returned to marijuana usage after he went to work for a construction company in State B in November 1999 (*see R.T.*, at 47-48). Between November 1999 and at least June 2000, Applicant used marijuana with varying frequency. Finding just about everybody on his work crew to be smoking marijuana, he began using it, too, a couple of times a week to help him relax and fit in with his co-workers (*see ex. 2; R.T.*, at 48-49). After his arrest for marijuana possession in June 2000, he quit using the substance any more. Since his 1989 conviction, he has refrained from selling or purchasing illegal drugs of any kind.

When Applicant married his now ex-wife in 1996, his finances were in pretty good shape. Unbeknownst to him at the time, she had a gambling problem (*see R.T.*, at 40). Applicant's finances deteriorated considerably after his wife became a compulsive video poker gambler and gambled away large amounts of their family money in the late 90s. After filing for divorce, he tried to reconcile with his spouse, but with no success (*see R.T.*, at 40-41). The combination of his wife's financial irresponsibility and gambling losses, and his own expenses incurred in connection with his divorce overburdened his ability to keep up with his debts. Finding her unfaithful to him, Applicant refiled for divorce in 2001; his divorce was finalized in 2002 (*see ex. 2; R.T.*, at 41). As a part of the divorce decree, Applicant was granted custody of his children.

To address his delinquent debts, Applicant filed a Chapter 13 wage earner's plan in April 1998. But due to some bad legal advice and his own inability to keep up with the trustee's scheduled \$300.00 monthly payments, his Chapter 13 petition was dismissed in January 1999. He retains custody of his children, who he is trying to raise as a single parent, without any child support from his ex-spouse.

Applicant makes no commitment to repay most of his delinquent debts at this time. His stated intention is to wait the passage of 7 years, after which he expects his debts to be removed from his credit report (*see ex. 2*). By his hearing claims, he has made arrangements with two of his creditors to pay them off. However, he failed to provide any documentation of these arrangements within the time afforded him to do so after the hearing (*see R.T.*, at 63-64).

Included among Applicant's debts is a 1992 vehicle repossession, in which the \$8,352.00 deficiency was charged off and a landlord's judgment, following his eviction from his home in March 2000 (*see R.T.*, at 55-56, 59-61).

Asked to complete and SF-86 in November 28, 2000, Applicant answered **no** to both questions 21 and 24, which asked about prior felony and alcohol-related arrests and convictions, respectively. In doing so, he omitted both his felony drug trafficking conviction of September 1989 and his June 2000 marijuana possession arrest of June 2000. Applicant attributes his omissions of these arrests to misunderstanding that (a) expunged convictions on old charges (beyond seven years), (b) arrests that were later dropped must be listed, and (c) he needed to be completely honest with the Government in filling out his SF-86 (*see ex. 2*). Applicant's claims of misreading the question invite credibility assessments that must be made on the basis of not just his claims but all of the surrounding circumstances. His explanations invite credibility assessments that take into account not only his own claims, but all of the surrounding circumstances.

Considering the clarity of the questions, the seriousness of his felony conviction, and the subject matter of both arrests (drugs), acceptance of Applicant's misunderstanding claims is difficult without probative evidence of how he could misread each of the pertinent questions. He provides too little insights into his thinking about these questions to permit supportable inferences he was simply confused by the questions. Reconciliation of Applicant's explanations with tenets of common sense is further complicated by Applicant's other SF-86 omissions: specifically, his omissions of his prior drug use when responding to question 27 (without any explanations) and his omissions of his financial delinquencies over 180 and 90 days, respectively, when responding to questions 38 and 39 of his SF-86. Delinquent debts omitted

from his SF-86 comprise his vehicle loan, charged off consumer credit card, charged off appliance debts, a bank debt and a utility debt. As to these covered debts, Applicant provides no plausible explanation for his failing to list them. His claims of not having the proper documents to address specific delinquent lack credible reasons for his answering **no** to questions 38 and 39 (*see* R.T., at 62). Hurtful to Applicant's credibility, too, are his acknowledged omissions of both his prior vehicle repossession and judgment of eviction from his SF-86 (*see* R.T., at 59-61).

Taking into account Applicant's explanations for his SF-86 omissions and all of the surrounding circumstances accompanying his falsification denials, Applicant cannot persuade that his omissions were not knowing and wilful. Inferences warrant, accordingly, that his omissions were deliberately made to avert drawing to his past arrest and drug histories, as well as troubles with his finances.

When interviewed by Agent A of DSS in April 2002, Applicant provided truthful details of his prior conviction and arrest, complete drug history and delinquent debts after being confronted with arrest information and a current credit report by the interviewing DSS agent.

Applicant has received praiseworthy performance evaluations from his current defense contractor (*see* ex. C). By all accounts, he is well regarded by his employer.

POLICIES

In addition to adjudicating Smith Amendment cases in accordance with current Executive Order and DoD Directive/Regulatory guidance, including applicable due process procedures, the criteria provide for consideration of issues covered by provisions 1 and 4 of the Act (10 U.S.C. Sec. 986) without consideration of the statute, this for the purpose of developing as complete a record as possible to aid the responsible authority for making a recommendation to the Sec Def as to whether the case merits a waiver. The DoD regulations include revised Adjudicative Guidelines designed to implement the provisions of the Smith Amendment and supplement existing Adjudicative Guidelines and pertinent considerations for assessing extenuation and mitigation set forth in E2.2 of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision of security clearance eligibility. E2.2 considerations comprise the following: the nature, extent and seriousness of the conduct, the circumstances surrounding the conduct, the frequency and recency of the conduct, the individual's age and maturity at the time of the conduct, the voluntariness of participation, the presence or absence of rehabilitation, the motivation for the conduct, the potential for pressure, coercion, or duress, and the likelihood of continuation or recurrence.

DoD's revised regulations are, in turn, reinforced by DOHA Operating Instruction 64, which all judges are required to follow in their implementation of Smith Amendment-covered cases.

Viewing the issues raised and evidence as a whole, the following adjudication policy guidelines are pertinent herein:

Criminal Conduct

The Concern: A history or pattern of criminal activity creates doubt about a person's judgement, reliability and trustworthiness.

Disqualifying Conditions:

DC a Allegations or admission of criminal conduct.

DC b A single serious crime or multiple lesser offenses.

DC c **Conviction in a Federal or State court, including a court-martial of a crime and sentenced to imprisonment for a term exceeding one year.**

Mitigating Conditions:

MC a The criminal behavior was not recent.

MC b The crime was an isolated incident.

MC c The person was pressured or coerced into committing the act and those pressures are no longer present in that person's life.

MC f There is clear evidence of successful rehabilitation.

MC g Potentially disqualifying conditions c. and d., above, may not be mitigated unless, where meritorious circumstances exist, the Secretary of Defense or the Secretary of the Military Department concerned has granted a waiver.

Drug Involvement

Disqualifying Conditions:

DC 1 Any drug use.

DC 2 Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution.

Mitigating Conditions: None

Financial Considerations

Concern: An individual who is financially overextended is at risk at having to engage in illegal acts to generate funds. Unexplained influence is often linked to proceeds from financially profitable criminal acts.

Disqualifying Conditions

DC 1. A history of not meeting financial obligations.

DC 3. Inability or unwillingness to satisfy debts.

Mitigating Conditions

MC 1. The behavior was not recent.

MC 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Personal Conduct

Basis: conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Disqualifying Conditions:

DC 2 The deliberate omission, concealment, falsification or misrepresentation of relevant and material facts from any personnel security questionnaire, personal history statement or similar form used to conduct investigations, determine employment qualifications, award benefits or status,

determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Mitigating conditions: None

Burden of Proof

Under the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance

may be made only upon a threshold finding that to do so is clearly

consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a nexus to the applicant's eligibility to obtain or maintain a security clearance. The required showing of nexus, however, does not require the Government to affirmatively demonstrate the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSION

Applicant comes to these proceedings with a history of drug-related criminal offenses (just one conviction), drug usage, trouble finances and multiple falsification of a security questionnaire. The first of his two marijuana-related arrests came in 1989 and resulted in a felony conviction on a plea bargained lesser drug trafficking offense and imposed imprisonment of three to fifteen years. It is this conviction and ensuing sentence in excess of 365 days that activates the mandatory clearance exclusion of the Smith Amendment (10 U.S.C. Sec. 986), unless a waiver is granted by the SecDef.

Smith Amendment and other criminally-related conduct

By reliance on otherwise applicable mitigating conditions, Applicant's underlying actions leading to his 1989 drug trafficking conviction could be considered dated and the result of youthful mistakes. His obtaining an expungement of the arrest leading to his 1989 conviction and ensuing judicial proceedings would indicate court satisfaction with Applicant's satisfying his parole conditions and otherwise demonstrating his fitness for regaining employment and good standing in his community. Applicant's drug-related mistakes of judgment at the time, would be, standing alone, sufficient to warrant some benefit of revised Adjudicative Guidelines MC a (criminal behavior not recent) and MC f (there is clear evidence of rehabilitation).

Applicant's satisfaction of his probation conditions and renewed indicia of rehabilitation (reinforced by the responsibility he exhibits in raising his children as a single parent) demonstrates evidence of increased maturity, reliability and trust. However, Applicant's rehabilitation efforts cannot be considered alone. His past drug use, his still unresolved financial difficulties and the trust lapses associated with his falsification of his SF-86 militate against granting him eligibility to access classified information. So, even without Smith Amendment coverage, Applicant's addressed trust/reliability deficiencies associated with his past criminal conduct, recurrent drug use, financial difficulties and SF-86 omissions would necessitate additional seasoning to enable him to reach the assurance levels necessary to make safe predictable judgments about his overall judgment, reliability and trustworthiness.

But as the result of Applicant's sentencing to incarceration in excess of one year (sub-para. 1.a), his actions place him within the coverage of the plain mandatory provisions of the Smith Amendment's provision 1. With the passage of the Smith Amendment, Congress manifested a statutory purpose for raising the level of critical scrutiny of persons with histories of serious criminal actions and corresponding sentencing time. Otherwise worthy cases become less amenable to reconciliation of perceived security risks than under pre-Smith Amendment assessments. Under the adjudicative guidelines implementing the Smith Amendment, Applicant's time in rehabilitation, while encouraging, still cannot free him from coverage of the Amendments's mandatory bar, save for his qualification for exception consideration. On the strength of the Smith Amendment's mandatory lifetime disqualification of applicants whose conduct (like Applicant's) is

found to be covered by the Smith Amendment's outlined provisions, risk absolving mitigation is available to Applicant only by virtue of MC g of the revised guidelines (no mitigation of potentially disqualifying conditions, except by demonstration of sufficiently meritorious circumstances to justify the granting of a waiver by the Secretary of Defense.

True, Applicant's arrest and conviction arising out of his 1989 involvement in drug trafficking was later expunged (in 1996) by the sentencing court presiding over his 1989 conviction. Neither the courts nor our Appeal Board, though, has ever approved expungement orders as a procedural tool to void application of a federal withholding statute by the act of ordered expungement of the underlying conviction. *Compare* ISCR OSD Case No. 01-00407, at 5 n. 8 (September 18, 2002) with *Dickerson v. New Banner Institute, Inc.*, 460 U.S. 103 (1983) (person is a convicted felon under a federal fire arms statute even though his state conviction was expunged). So notwithstanding Applicant's ordered expungement of his 1989 arrest and ensuing judicial proceedings, his conviction and sentence continues to trigger the application of the Smith Amendment to his underlying conviction and sentence.

Independent consideration of the mitigating conditions developed for assessing a provision 1 situation falling under the Smith Amendment warrants no further consideration of a waiver in this case. Taking full account of the gravity of Applicant's covered 1989 offense, his involvement in another contemporaneous offense, his past drug use, his still unresolved financial difficulties and his SF-86 omissions form too many compounding trust problems for Applicant to enable him to claim any of the mitigation benefits of either the specific mitigating conditions detailed in Guideline J of the Adjudicative Guidelines, or the more general E.2.2 considerations of the Directive. Recommendation for further consideration of a waiver (availing of MC g of the Adjudicative Guidelines for criminal conduct) from the *per se* bar requirements of 10 U.S.C. Sec. 986 is not warranted herein. Unfavorable conclusions are called for with respect to the allegations covered by sub-paragraphs 1.a and 1.c of Guideline J by virtue of the *per se* requirements of the Smith Amendment.

Although Applicant was exonerated in connection with his June 2000 drug possession arrest, his admitted smoking of marijuana in the car he was driving before being stopped by arresting police preclude mitigation of the security implications of his drug possession associated with his June 2000 arrest. When combined with the criminal implications of his covered SF-86 omissions (*see* discussion *infra*), it is too early to make safe predictions that Applicant's still unbroken pattern of criminal conduct is free of recurrence risks at this time. With Applicant unable to meet his mitigation burden, unfavorable conclusions warrant, accordingly with respect to sub-paragraphs 1.b and 1.d of Guideline J.

Applicant's marijuana history

Applicant's history of involvement with illegal drugs covers a quite lengthy time frame: drug trafficking in 1989 when Applicant was 19 years of age and resumed twice-weekly marijuana use with fellow members of his work crew for a short seven month period before he quit illegal drugs altogether in June 2000 (following his drug possession arrest). Applicant's involvement with illegal drugs is security significant and sufficient to invite consideration of two disqualifying conditions of the Adjudicative Guidelines for drug involvement: DC 1 (any drug use) and DC 2 (illegal drug possession).

Applicant's recurrent involvement with marijuana over a 10-year time span is neither isolated nor sufficiently dated to be considered mitigated by passage of time. His use has been a recurring problem for Applicant since his conviction on drug trafficking charges in 1989. Acceptance of Applicant's claims he is through with illegal drugs requires considerable confidence in his restorative efforts to date and his commitments to steer clear of drugs in the foreseeable future. His credibility has been too weakened by his drug use omissions, however, to permit acceptance of his assurances at this time without more corroboration and seasoning. So, under the circumstances, Applicant may not avail himself of any of the mitigating conditions at this time. Overall, Applicant does not meet his mitigation burden at this time. Unfavorable conclusions warrant, accordingly, with respect to the allegations covered by sub-paragraph 2.a of Guideline J.

Applicant's problem finances

Applicant accrued considerable joint debt with his spouse, much of it credit card-related, before his divorce in 1997. Creditors listed in Applicant's credit report who charged off their debts were essentially ignored after failed efforts to implement a Chapter 13 wage earners' plan in 1998. Applicant's claims of renewed efforts to work out payment

arrangements with some of them have never been documented and cannot be accepted on Applicant's oral assurances alone. On the strength of the evidence presented, Government may invoke two Disqualifying Conditions (DC) of the Adjudicative Guidelines for financial considerations: DC 1 (history of not meeting financial obligations) and DC 3 (inability or unwillingness to satisfy debts).

An applicant's shown history of ignoring undisputed creditor obligations even when resources become available for repayment bears close resemblance to an applicant's being asked to place his own private interests in subordination to the Government's security interests when the two clash with each other. Over time, our Appeal Board has shown general consistency in disallowing applicant claims to mitigation based on charge-offs and limitation bars on debts previously unpaid due to cited extenuating circumstances. *Cf.* ISCR Case No. 01-17474 (March 7, 2003); ISCR Case No. 01-13653 (March 7, 2003); ISCR Case No. 01-12147 (January 21, 2003). Security clearance decisions are, of course, never an exact science, but rather involve predictive judgments about a person's security eligibility based on the person's past conduct and present circumstances. *See Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988). Without any payment seasoning to rely on to advance his mitigation claims, he lacks the probative mitigation necessary to absolve him of the pressure and judgment risks associated with being in debt. Unfavorable conclusions warrant, accordingly, with respect to sub-paragraph 3.a of Guideline F.

Applicant's covered SF-86 omissions

Potentially serious and difficult to reconcile with the trust and reliability requirements for holding a security clearance are the timing and circumstances of Applicant's SF-86 omissions of his drug-related conviction and arrest (two spanning 1989 and 2000), drug abuse history and debt delinquencies. So much trust is imposed on persons cleared to see classified information that deviation tolerances for incidents of trust betrayal are calibrated narrowly.

Applicant falsified his SF-86 in several material respects: omitting his two criminal offenses, his recent drug use history and his debts exceeding 180 and 90 days, respectively. He makes no persuasive claim of misunderstanding any of the questions covered, which were posed in a straightforward way in the questionnaire. Applicant's explanations for omitting the material information in the questionnaire are considered insufficient to avert drawn conclusions of knowing and wilful concealment of facts material to a security clearance determination. His omissions invite application of a disqualifying condition (DC) for personal conduct of the Adjudicative Guidelines: DC 2 (falsification of a security questionnaire).

Mitigation is not available to Applicant. Only when afforded the opportunity to answer the SOR did he admit his conviction/arrest, drug use and debt delinquencies. DOHA's Appeal Board has never found the use of mitigating condition (MC) 3 (prompt, good faith disclosure) of the Adjudicative Guidelines for personal conduct to be available to applicants seeking mitigation absent convincing proof of a prompt, good faith correction before being confronted with the facts. In this vein, Applicant does not satisfy either of the confrontation or prompt prongs of MC 3.

Unfavorable conclusions warrant with respect to sub-paragraphs 2.a and 2.b of Guideline E. Applicant's omissions reflect no mitigating actions either that would enable him to avoid treating them as subject to the felony provisions of 18 U.S.C. Sec. 1001. Unfavorable conclusions warrant as well with respect to sub-paragraphs 4.a through 4.c of Guideline E.

In reaching my decision, I have considered the evidence as a whole, including each of the factors set forth in the Procedures section (paragraph 6) of the Directive, as well as E.2.2 of the

Adjudicative Process of Enclosure 2 of the same Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the FINDINGS OF FACT, CONCLUSIONS, CONDITIONS, and the factors listed above, this Administrative Judge makes the following FORMAL FINDINGS:

GUIDELINE J (CRIMINAL CONDUCT): AGAINST APPLICANT

Sub-para. 1.a: AGAINST APPLICANT

Sub-para. 1.b AGAINST APPLICANT

Sub-para. 1.c: AGAINST APPLICANT

Sub-para. 1.d: AGAINST APPLICANT

GUIDELINE H (DRUG INVOLVEMENT): AGAINST APPLICANT

Sub-para. 2.a: AGAINST APPLICANT

GUIDELINE F: AGAINST APPLICANT

Sub-para. 3.a: AGAINST APPLICANT

GUIDELINE E (PERSONAL CONDUCT) AGAINST APPLICANT

Sub-para. 3.a: AGAINST APPLICANT

Sub-para. 3.b: AGAINST APPLICANT

Sub-para. 3.c: AGAINST APPLICANT

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. I do not recommend further consideration of this case for a waiver of 10 U.S.C. Sec. 986.

Roger C. Wesley

Administrative Judge